

### REMARKS

The above-captioned application is a 35 U.S.C. § 371 National Phase application of International Application Number PCT/US99/22269, which claims priority from European Application No. 99400394.5, filed February 18, 1999 and European Application No. 98402374.7, filed September 25, 1998.

Claims 10, 11, 14, 15, 19 and 23 are being acted upon. Claims 16-18 and 20-22 are withdrawn from consideration by the Examiner. Claims 10, 11 and 15 are allowed. Claims 14, 19 and 23 stand rejected. Claim 19 has been amended. Claims 14 and 23 have been canceled.

This amendment and response has been prepared according to the USPTO's revised amendment format.

### Information Disclosure Statement

The Examiner has stated that reference AS on Form PTO-1449 that was mailed October 2, 2001 has not been considered because it was not received by the Office. Applicants' records indicate that five references, including the above missing reference, and a return receipt postcard were mailed to the USPTO on October 2, 2001. The return receipt postcard was stamped by OIPE and returned to applicants, acknowledging receipt of all five references. In addition, applicants' records indicate that three references, including the above missing reference, and a return receipt postcard were mailed to the USPTO on April 21, 2003. The return receipt postcard was stamped by OIPE and returned to applicants, acknowledging receipt of all three references. Nevertheless, applicants have enclosed for the third time the missing reference with this amendment and response and request that it be considered by the Examiner.

### Withdrawn Claims

Applicants note that claims 16-18 and 20-22, which were presented in applicants' response to the previous office action, were withdrawn from consideration as being drawn to a non-elected invention. Claims 16-18 depend either directly or indirectly from claim 10, which has been allowed. Claims 20-22 depend either directly or indirectly from amended claim 19, which applicants believe is allowable. Applicants request that withdrawn claims 16-18 and 20-22 be rejoined upon allowance of claims 10 and 19.

Applicants have canceled claim 23, which is directed to a polypeptide, because applicants did not elect to prosecute polypeptide claims in this application.

### Rejections under 35 U.S.C. § 102

#### **Sulston and Muzny**

Claim 14 stands rejected under 35 U.S.C. § 102(a) or 102(b) as being anticipated by either Sulston *et al.* ("Sulston") or Muzny *et al.* ("Muzny"). Claim 14 has been canceled. Accordingly, withdrawal of the rejections of claim 14 under 35 U.S.C. § 102(a) or 102(b) in view of both Sulston and Muzny are respectfully requested.

#### **Hu**

Claim 19 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Hu *et al.*, "Cloning and Characterization of a Gene Required for the Secretion of Extracellular Enzymes across the Outer Membrane by *Xanthomonas campestris* pv. *Campestris*", *J. Bacteriology*, vol. 174, no. 8, pp. 2679-2687 (April 1992) ("Hu"). Specifically, the Examiner has stated that Hu teaches a polypeptide of at least 8 contiguous residues of the amino acid sequence of SEQ ID NO: 2.

Hu refers to nucleic acid and amino acid sequences of the fragment required for complementing XC1708.

Claim 19 has been amended to recite a nucleic acid sequence which encodes an antigenic polypeptide of at least 10 contiguous residues of the amino acid sequence of SEQ ID NO: 2. Support for the amendment to claim 19 can be found, for example, in applicants' published PCT application from page 11, line 31 to page 12, line 5. Therefore, no new matter has been added by the amendment to claim 19.

Hu does not disclose or suggest a nucleic acid sequence which encodes an antigenic polypeptide of at least 10 contiguous residues of the amino acid sequence of SEQ ID NO: 2. Therefore, applicants submit that claim 19, as amended, is novel in light of Hu. Accordingly, withdrawal of the rejection of claim 19 under 35 U.S.C. § 102(b) in view of Hu is respectfully requested.

#### Rejection under 35 U.S.C. § 112

Claims 19 and 23 stand rejected under 35 U.S.C. § 112 as not describing the claimed invention. Specifically, the Examiner stated that the specification discloses only "at least about 8 contiguous residues" and not "at least 8 contiguous residues".

Claim 19 has now been amended to recite a nucleic acid sequence which encodes an antigenic polypeptide of at least 10 contiguous residues of the amino acid sequence of SEQ ID NO: 2. Support for the amendment to claim 19 can be found, for example, in applicants' published PCT application from page 11, line 31 to page 12, line 5. Therefore, no new matter has been added by the amendment to claim 19. Withdrawal of the rejection of claim 19 under 35 U.S.C. § 112 is respectfully requested.

Claim 23 has been canceled. Withdrawal of the rejection of claim 23 under 35 U.S.C. § 112 is respectfully requested.

### CONCLUSION

Applicants submit that the cited references do not disclose or suggest the subject matter of claim 19, as amended. In addition, applicants submit that claims 16-18 and 20-22 should not be withdrawn from consideration. Accordingly, reconsideration of the rejections and allowance of the claims at an early date are earnestly solicited.

If the undersigned can be of assistance to the Examiner in addressing issues to advance the application to allowance, please contact the undersigned at the number set forth below.

Respectfully submitted,



Michael G. Biro  
Reg. No. 46,556

Schering-Plough Corporation  
Patent Department  
Mail Stop K-6-1, 1990  
2000 Galloping Hill Road  
Kenilworth, NJ 07033-0530

Phone: (908) 298-5098  
Fax: (908) 298-5388